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General Assembly
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Agenda item 127
International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Security Council
Sixty-fifth year

Identical letters dated 2 June 2010 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

I have the honour to transmit to you the attached letter dated 25 May 2010 from Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda, submitting several requests concerning the completion of the work of the Tribunal.

In his letter, President Byron seeks the extension of the term of office of seven permanent judges and nine ad litem judges. The term of office of the judges expires on 31 December 2010. As you are aware, in resolution 1901 (2009) of 16 December 2009, the Security Council underlined its intention to extend, by 30 June 2010, (a) the terms of office of all trial judges at the Tribunal based on the projected trial schedule, and (b) the terms of office of all appeals judges until 31 December 2012, or until the completion of the cases to which they are assigned if sooner.

President Byron also wishes to redeploy judges from the Trial Chambers to the Appeals Chamber upon the completion of the evidence phase of the trials to which they are assigned. President Byron is drawing attention to this issue because article 13, paragraph 3, of the statute of the Tribunal, as amended by Security Council resolution 1878 (2009) of 7 July 2009, provides that redeployments will be made upon the completion of the case.

When some judges are redeployed to the Appeals Chamber, and others resign on the completion of their cases, there will be one permanent judge left at the Tribunal. This means that the Tribunal will not have enough judges to fill the positions of President and Presiding Judge since, according to the statute, ad litem

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judges are not eligible for election to these positions. President Byron proposes two ways in which the Tribunal may fill these essential positions without having to appoint new permanent judges: (a) converting ad litem judges to permanent judges; or (b) amending the statute to permit ad litem judges to take part in the election for and to be elected as President and Presiding Judge.

Finally, the Tribunal no longer has a roster of ad litem judges. This is because the ad litem judges who were on the roster were not available to serve, and so the Tribunal did not obtain the extension of their term of office in 2009. As a contingency plan, President Byron suggests that the statute of the Tribunal should be amended to allow the Secretary-General to appoint, at the request of the President, any former judge of the International Criminal Tribunal for Rwanda or the International Tribunal for the Former Yugoslavia to serve as an ad litem judge of the International Criminal Tribunal for Rwanda.

It falls to the General Assembly and the Security Council to consider and decide on these requests. Accordingly, I would be grateful if you would bring the letter from President Byron to the attention of the members of the General Assembly and the members of the Security Council.

(*Signed*) **BAN** Ki-moon

Annex

Letter dated 25 May 2010 from the President of the International Criminal Tribunal for Rwanda addressed to the Secretary-General

In line with the request of the Security Council in resolution 1901 (2009), I herewith submit an updated trial and appeals schedule (enclosures I and II) as well as an overview over the current assignments of all Judges serving at the Tribunal (enclosure III). My letter, further, addresses four issues, concerning the extension of the terms of office of judges (1), the timing of redeployment to the Appeals Chamber (2), the need for judges to fill the key functions of the Tribunal (3) and the re-establishment of a roster of non-serving judges (4). I ask you to submit the requests to the Security Council and the General Assembly for appropriate action, where required.

1. Extension request

Based on the trial and appeals schedule attached, I seek extension of the terms of office for 7 of our 8 permanent and 9 of our 11 ad litem judges. The extension request takes into consideration that four trial judges, Judges Byron, Khan, Sekule and Ramaroson, will be redeployed to the Appeals Chamber in line with article 13 (3) of the statute.

The requested extensions are as follows:

Permanent judges

Extension sought until 31 December 2011 or completion of the trials to which he is or will be assigned, if sooner, for

Judge Bakhtiyar Tuzmukhamedov (Russian Federation).

Extension sought until 31 December 2013 or completion of the trials and appeals to which they are or will be assigned, if sooner, for

Judge William H. Sekule (United Republic of Tanzania)

Judge Mehmet Güney (Turkey)

Judge Andrésia Vaz (Senegal)

Judge Arlette Ramaroson (Madagascar).

Extension sought until 31 December 2014 or completion of the trials and appeals to which they are or will be assigned, if sooner, for

Judge Dennis Byron (Saint Kitts and Nevis)

Judge Khalida Rachid Khan (Pakistan).

Ad litem judges

Extension sought until 31 December 2011 or completion of the trials to which they are or will be assigned, if sooner, for

Judge Solomy Balungi Bossa (Uganda)

Judge Lee Gacugia Muthoga (Kenya)

Judge Florence Rita Arrey (Cameroon)

Judge Emile Francis Short (Ghana)

Judge Seon Ki Park (Republic of Korea)

Judge Gberdao Gustave Kam (Burkina Faso)

Judge Vagn Joensen (Denmark)

Judge Mparany Rajohnson (Madagascar)

Judge Aydin Sefa Akay (Turkey).

Please note that it is currently anticipated that permanent Judge Joseph Asoka de Silva (Sri Lanka) as well as ad litem Judges Taghrid Hikmet (Jordan) and Joseph Masanche (United Republic of Tanzania) will all complete their assignments before 31 December 2010.

2. Time frame for redeployment to the Appeals Chamber

At the same time, I would like to draw your attention to the wording of article 13 (3), as amended by resolution 1878 (2009). The article currently stipulates that judges can be redeployed to the Appeals Chamber "on the completion of the cases to which each judge is assigned".

Three of the four judges to be redeployed from the Tribunal will not have completed the judgement drafting phase of their last trial cases before the second half of 2011, while their services on the Appeals Chamber might be required already earlier. If redeployments could take place only after judgement delivery, delays in the appeals schedule could occur.

Therefore, judges to be redeployed at the Appeals Chamber should be able to take on their first assignment at the Appeals Chamber upon completion of the evidence phase in all their assignments at trial level, where necessary. This corresponds to the practice followed for prior redeployments of judges to the Appeals Chamber. Depending on the circumstances of the case, the judgement drafting phase of a trial could leave sufficient time for judges to take on pre-appeal and appeal work in another case. For example, a judge was redeployed to the Appeals Chamber over one year before judgement delivery in her last trial assignment, without this arrangement having a negative impact on the judgement delivery date or on the commencement of the appeals cases she was assigned to.

3. Need for judges to fill the key functions of the Tribunal

Following the resignation of three permanent judges in 2008 (Judge Reddy from Fiji and Judge Weinberg from Argentina) and 2009 (Judge Møse from Norway), currently only five resident permanent judges serve at the Tribunal. Four of those five judges will be redeployed to the Appeals Chamber: Judge Byron (the President of the Tribunal), Judge Khan (Vice-President and Presiding Judge of Trial Chamber III), Judge Sekule (Presiding Judge of Trial Chamber II) and Judge Ramaroson. Their redeployment will leave only one permanent judge (Judge Tuzmukhamedov).

Article 13 (1) and (7) of the statute provides that the President and the Presiding Judges are members of a Trial Chamber. While no equivalent rules exist

for the function of Vice-President, arguably, the Vice-President cannot properly exercise the functions of the President "in case the latter is absent" if he or she is also absent. In any event, the second terms of Judge Byron as President and of Judge Khan as Vice-President expire by the end of May 2011.

It is essential that the key positions for the daily functioning of the Chambers of the Tribunal can be filled, as long as trials continue, and until the Residual Mechanism commences its work. However, at this stage in the pre-closure phase of the Tribunal, it does not seem feasible to appoint three new judges as permanent judges. The Tribunal does not have sufficient work for so many additional judges, and the newly appointed judges would lack the experience to fill the leading positions of the Tribunal at this stage of the completion strategy.

According to article 12 quater (2) (a), ad litem judges are not eligible as President or Presiding Judge of a Trial Chamber. It is the practice of the Tribunal to apply the same requirement to the Vice-President.

The need to fill the key functions of the Tribunal without adding new judges could be addressed in two ways. Both options involve relying on the currently serving ad litem judges who have the necessary experience and institutional memory.

One possibility would be to convert three ad litem judges to permanent judges. The Tribunal currently has eight resident ad litem judges the extension of whose terms of office will be requested beyond 31 December 2010. Five of them, from Uganda, Kenya, Cameroon, Burkina Faso and Denmark, do not have the same nationality as any current permanent judge at the International Criminal Tribunal for Rwanda or any judge at the International Tribunal for the Former Yugoslavia who is or will be serving at the Appeals Chamber (see article 12 bis (1) (b) of the statute). Two judges, from Turkey and Madagascar, have the same nationality as permanent judges at the International Criminal Tribunal for Rwanda. One judge, from the Republic of Korea, has the same nationality as a judge at the International Tribunal for the Former Yugoslavia who will be deployed to the Appeals Chamber.

With respect to the requirement under article 12 bis (c), taking "due account of the adequate representation of the principal legal systems of the world", I note that, of the three permanent judges who have resigned, one was from an English common law system (Fiji), one from a French civil law system (Argentina) and one from a Scandinavian civil law system (Norway). Of the five eligible ad litem judges, three are from English common law systems (Uganda, Kenya and Cameroon), one from a French civil law system (Burkina Faso) and one from a Scandinavian civil law system (Denmark).

Such an appointment of three ad litem judges as permanent judges would have almost no financial implications. An ad litem judge converted to a permanent judge would become entitled only to education grant and education grant travel for his or her eligible children. The judges will not be entitled to pension rights, unless their term as permanent judges is extended beyond three years, which is unlikely under the time frame of the current completion strategy.

A second option to address the lack of sufficient permanent judges would be to enable ad litem judges to fill the key functions of the Tribunal. This would require an amendment of the statute of the Tribunal by deleting article 12 quater (2) and amending article 13 so that ad litem judges would have the same powers as

permanent judges, including eligibility as President, Presiding Judge of a Trial Chamber and, consequently, as Vice-President. This solution would have no financial implications.

Neither of my proposals is linked to or will prejudice the decision to be taken by the General Assembly at its sixty-fifth session on whether to grant ad litem judges equal terms and conditions of service with permanent judges.

4. Roster for judges

My last request addresses the fact that the Tribunal no longer has a roster of non-serving judges. In 2009, all the judges that remained on the ad litem judges roster indicated that they were no longer available, and one judge had passed away. Therefore, the Tribunal refrained from asking for extension of their terms of office as non-serving judges.

During the course of 2010, 2 of the 11 serving ad litem judges and one permanent judge will have completed their cases and are expected to resign as serving judges. Four permanent judges are scheduled for redeployment to the Appeals Chamber.

However, the workload before the Tribunal remains high in 2011, and there is uncertainty with regard to some possible additional trial activities, in particular the number of contempt proceedings to be expected. There is also a risk of judges becoming unavailable because of unforeseen health issues. The Tribunal at the moment would have no contingencies to address such situations and to ensure that judges are available to take over the assignment.

Therefore, a roster should be created of all previously elected non-serving and permanent and ad litem judges at the two Tribunals, who would have the necessary experience to work efficiently on their assignments from the beginning. For this purpose, article 12 ter (2) of the statute could be amended, and the Secretary-General could be authorized to appoint as an ad litem judge any non-serving permanent or ad litem judge who has previously been elected or appointed pursuant to the relevant provisions of the statutes of the Tribunals.

As it is unclear at this moment when the need for one or more extra judges would arise, if at all, the availability of each judge on the roster would be verified by the Tribunal at the moment when his or her services are needed. In such case, the Tribunal could, together with its request to the Secretary-General for appointment of one or more roster judges, submit a shortlist of candidates available for a specific assignment at a given time.

All four of the addressed matters are of crucial importance to ensure that the Tribunal can meet the goals of its completion strategy, that is, the completion of all trials by 2011 and of all appeals by 2013.

Therefore, I would be grateful if you could bring my requests to the attention of the Security Council and the General Assembly for appropriate action, where required.

(*Signed*) Dennis **Byron**
President

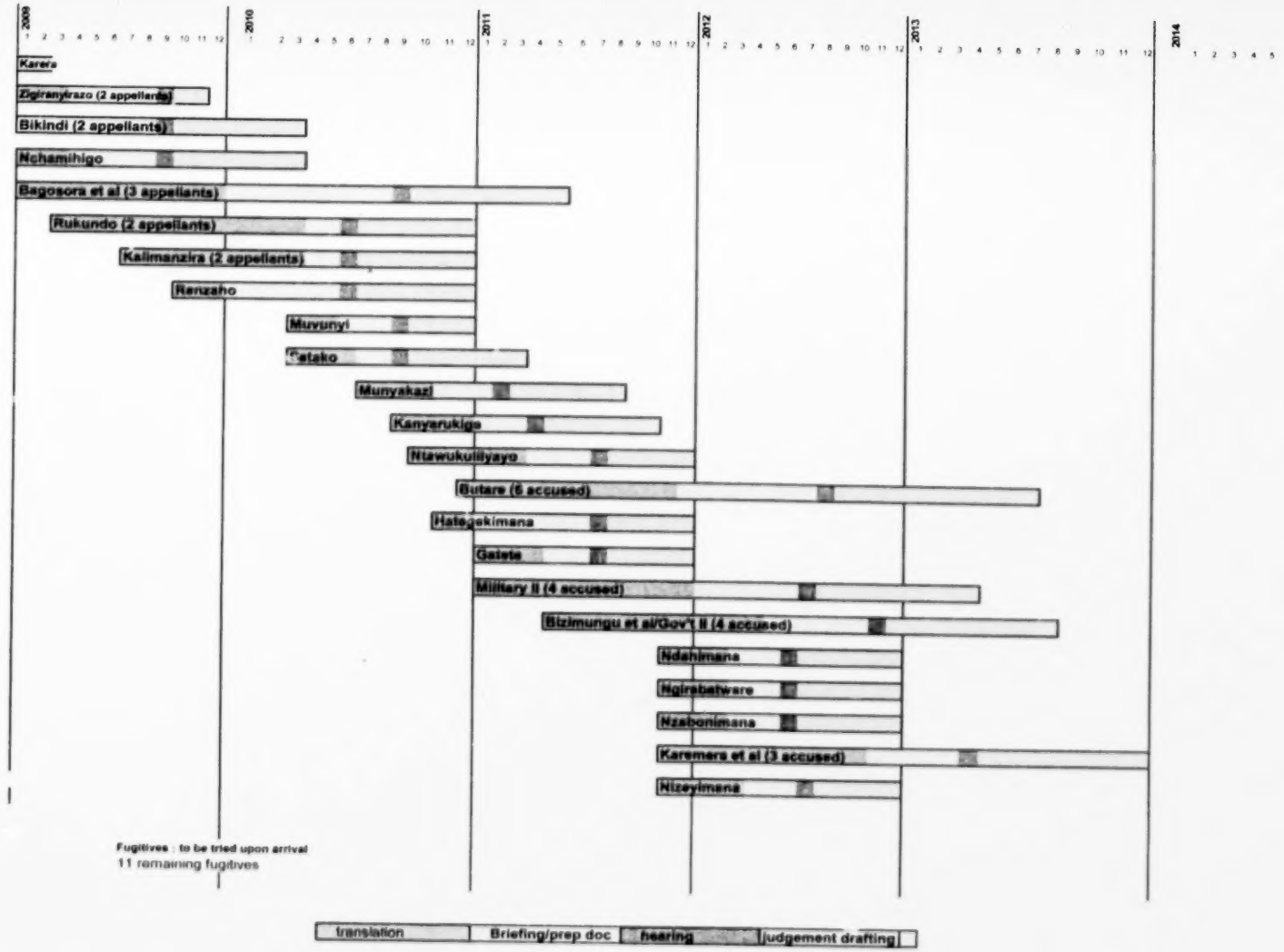
Enclosure I

International Criminal Tribunal for Rwanda projected schedule for trial cases for the biennium 2010-2011

C/S Case #	Name of accused	2009												2010												2011											
	Month	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12
Annex 1																																					
41	Bizimungu (4 accused)																													J D							
42	Butare (6 accused)				C A																			J D	JD												
43	Military II (4 accused)						C A																		JD												
45	Setako						C E					C A			J D																						
46	Munyakazi					S					C E			C A						J D																	
47	Hategekimana			S							C E				C A								J D														
48	Karemera et al (3 accused)																						C E							C A				J D		
49	Kanyarukiga						S								C E		C A				J D																
50	Ngirabatware								S																C E		C A								J D		
51	Ntawukulilyayo					S							C E							C A			J D													
52	Gatete										S					C E					C A				JD											
53	Nzabonimana											S											C A												J D		
Annex 2 of Completion Strategy	Ndahimana									IA													S		C E				C A				J D			
	Nizeyimana										IA													S			C E				C A				J D		
	Evidence Preservation Case 1																																				
	Evidence Preservation Case 2																																				
	Evidence Preservation Case 3																																				

Enclosure II

International Criminal Tribunal for Rwanda appeals schedule 2009-2013



Enclosure III

Current assignments of trial judges at the International Criminal Tribunal for Rwanda and expected judgement dates

Permanent judges

Judge	*Assigned case*	*Projected judgement date*
Byron (St Kitts)	Karemera et al. (presiding)	September 2011
Khan (Pakistan)	Ntawukulilyayo (presiding)	September 2010
	Gatete (presiding)	December 2010
	Bizimungu et al. (presiding)	May 2011
Sekule (United Republic of Tanzania)	Nyiramasuhuko et al. (presiding)	December 2010
	Ngirabatware (presiding)	September 2011
Ramaroson (Madagascar)	Hategekimana (presiding)	October 2010
	Nyiramasuhuko et al.	December 2010
De Silva (Sri Lanka)	Ndindiliyimana et al. (presiding)	December 2010
Tuzmukhamedov (Russian Federation)	Ndahimana	August 2011
	Nzabonimana	October 2011

Ad litem judges

Judge	*Assigned case*	*Projected judgement date*
Bossa (Uganda)	Nyiramasuhuko et al.	December 2010
	Ngirabatware	September 2011
	Nzabonimana (presiding)	October 2011
Muthoga (Kenya)	Ntawukulilyayo	September 2010
	Gatete	December 2010
	Bizimungu et al.	May 2011
	Nizeyimana	October 2011
Arrey (Cameroon)	Munyakazi (presiding)	June 2010
	Ndahimana (presiding)	August 2011
Short (Ghana)	Bizimungu et al.	May 2011
Hikmet (Jordan)	Kanyarukiga (presiding)	August 2010
	Hategekimana	October 2010
	Ndindiliyimana et al.	December 2010
Park (Republic of Korea)	Kanyarukiga	August 2010
	Ndindiliyimana et al.	December 2010
	Nizeyimana	October 2011
Kam (Burkina Faso)	Karemera et al.	September 2011
Joensen (Denmark)	Karemera et al.	September 2011
Masanche (United Republic of Tanzania)	Kanyarukiga	August 2010
	Hategekimana	October 2010
Rajohnson (Madagascar)	Munyakazi	June 2010
	Ngirabatware	September 2011
	Nzabonimana	October 2011

Judge	*Assigned case*	*Projected judgement date*
Akay (Turkey)	Munyakazi	June 2010
	Ntawukulilyayo	September 2010
	Gatete	December 2010
	Ndahimana	August 2011

Additional assignments required for

- **Nizeyimana trial** (expected commencement in October 2010, expected judgement delivery October 2011 — third judge in addition to Judge Muthoga and Park still to be determined);
- **Rule 71 bis evidence preservation hearings** (three single judges; planned — subject to staff available in the Office of the Prosecutor — between October 2010 and June 2011 at latest);
- **Rule 11 bis requests** (depending on date of the request by the Prosecutor, likely to be heard in the first quarter 2011 — two benches would be required until approximately April 2011);
- **Contempt cases** (provision to be made for up to five cases in 2010-2011).